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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CENTER FOR BIOLOGICAL DIVERSITY, et al.

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT,

Defendant,

v.

HIGH DESERT MULTIPLE USE COALITION,
et al.

Defendant-Intervenors.

Case No. C-00-0927 WHA-ADR

**STIPULATION AND ORDER
CONCERNING INJUNCTIVE
RELIEF FOR THE PEIRSON'S
MILK-VETCH**

Case No. C-00-0927 WHA-ADR

1 WHEREAS, Plaintiffs, Center for Biological Diversity, et al. ("the Center") filed this
2 action on March 16, 2000, alleging that the federal defendant, Bureau of Land Management
3 ("BLM") was in violation of Section 7 of the Endangered Species Act ("ESA") by failing to enter
4 into formal consultation with the U.S. Fish and Wildlife Service ("FWS") on the effects of the
5 adoption of the California Desert Conservation Area Plan, as amended, ("CDCA Plan") on
6 threatened and endangered species. 16 U.S.C. § 1536(a)(2);

7 WHEREAS, in a Stipulation approved by the Court on August 25, 2000, BLM
8 acknowledged that because activities authorized, permitted, or allowed under the CDCA Plan
9 may adversely affect threatened and endangered species, Section 7(a)(2) of the ESA, requires
10 BLM to consult with FWS to insure that its adoption and implementation of the CDCA Plan is
11 not likely to jeopardize the continued existence of any threatened or endangered species or to
12 result in the destruction or adverse modification of the critical habitat of any such species. 16
13 U.S.C. § 1536(a)(2);

14 WHEREAS, the FWS has determined that a plant species, *Astragalus magdalenae* var.
15 *peirsonii*, commonly known as the Peirson's milk-vetch, is entitled to protection under the ESA.
16 63 Fed. Reg. 53596 (Oct. 6, 1998);

17 WHEREAS, the only known populations of Peirson's milk-vetch in the United States are
18 in the Algodones Dunes (also known as the Imperial Sand Dunes Recreation Area) within the
19 CDCA. 63 Fed. Reg. 53599, 53605;

20 WHEREAS, the primary threat to the continued existence of Peirson's milk-vetch is the
21 destruction of individual plants and dune habitat from Off-Highway Vehicle ("OHV") use and
22 associated recreational development. 63 Fed. Reg. 53600, 53605;

23 WHEREAS, under the CDCA Plan approximately 75% of the Algodones Dune system is
24 open to motorized vehicle use and between 75% and 80% of all known colonies of Peirson's
25 milk-vetch are located in these open areas. 63 Fed. Reg. 53600, 53605;

26 WHEREAS, heavy OHV use will eliminate colonies of Peirson's milk-vetch and even
27 moderate OHV use will lower the reproductive success of Peirson's milk-vetch colonies. 63 Fed.
28 Reg. 53600, 53605-06;

1 WHEREAS, from approximately October to March of each year portions of the
2 Algodones Dunes, including areas which contain Peirson's milk-vetch colonies, receive intensive
3 OHV use. 63 Fed. Reg. 53605-06;

4 WHEREAS, the parties agree that the presently permitted level of OHV use of the
5 Algodones Dunes may affect the population of the Peirson's milk-vetch;

6 WHEREAS, under Section 7 of the ESA, federal agencies shall in consultation with and
7 with the assistance of the Secretary of Interior insure that any action authorized, funded, or
8 carried out by such agency is not likely to jeopardize the continued existence of any endangered
9 or threatened species or result in the destruction or adverse modification of critical habitat for any
10 endangered or threatened species. 16 U.S.C. § 1536(a)(2);

11 WHEREAS, pursuant to Section 7 of the ESA, before consultation with the Secretary is
12 concluded, federal agency actions shall not jeopardize the continued existence of any endangered
13 or threatened species or result in the destruction or adverse modification of critical habitat for any
14 endangered or threatened species; and,

15 WHEREAS, the parties would like to avoid litigation of the need for an immediate
16 injunction of OHV use in the Algodones Dunes to protect the Peirson's milk-vetch.

17
18 THEREFORE, the parties agree as follows:

19 1. BLM shall close three areas of the Algodones Dunes to all OHV and other vehicle
20 use. Official government vehicles conducting monitoring or other legitimate governmental
21 activities shall be allowed inside the closed areas.

22 2. The three areas: a Northern, a Central, and a Southern closure are depicted on
23 maps attached to this stipulation as Exhibit A. By no later than Tuesday, October 24, the parties
24 will file a supplement to this Stipulation that shall include a legal, textual description of each
25 closure area and at least one color map, at least 2 feet by 2 feet in area, that depicts the closure
26 areas in greater detail than the maps appended at Exhibit A. The parties do not intend the
27 supplement to vary from Exhibit A, but only to provide a greater level of detail.

28

1 3. The three closures described in Paragraph 2 and depicted in Exhibit A shall
2 become effective immediately upon the Court's approval of this stipulation. Within two days of
3 the filing of the supplement to this Stipulation referred to in Paragraph 2, BLM shall submit a
4 notice of the three closures to the Federal Register for immediate publication.

5 4. BLM shall have until November 22, 2000 to put into place signs, notices, and any
6 other equipment determined to be required by BLM to mark the boundaries of the three closure
7 areas.

8 5. BLM agrees to maintain the closures described above in effect until BLM
9 completes a programmatic formal consultation with FWS on the entire CDCA Plan and receives
10 a Biological Opinion on the entire CDCA Plan from FWS.

11 6. So long as the terms of this agreement are complied with and there is substantial
12 on the ground compliance with BLM's closure order, the Center agrees not to seek injunctive
13 relief concerning impacts to the Peirson's Milk Vetch from CDCA Plan activities until BLM
14 completes a programmatic formal consultation with FWS on the entire CDCA Plan and receives
15 a Biological Opinion on the entire CDCA Plan from FWS.

16 7. This Stipulation is effective immediately upon its signature as an agreement
17 among the signatories and is further effective as an Order of the Court upon its approval and
18 entry as an Order by the Court.

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24 DATED: October 20, 2000

For Plaintiffs:

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